

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ISIL HOLDER	:	ORDER
	:	DTA NO. 819184
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Tax under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Years 1997 and 1998.	:	

Petitioner, Isil Holder, 1248 Schenectady Avenue, Brooklyn, New York 11203, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 1997 and 1998.

The Division of Taxation (“Division”), by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel), brought a motion dated December 19, 2002 seeking an order dismissing the petition, with prejudice, pursuant to sections 3000.3(b); 3000.4(a); 3000.5; 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.3[b], 3000.4[a], 3000.5, and 3000.9) and granting summary determination in favor of the Division. Petitioner, who is not represented in this matter, did not respond to the Division’s motion. Accordingly, the 90-day period for the issuance of this order commenced on January 18, 2003, the date petitioner’s time to respond expired. After due consideration of the documents and arguments submitted, Timothy J. Alston, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. The Division of Taxation issued to petitioner, Isil Holder, two notices of deficiency dated December 7, 2000, asserting additional personal income tax due for the years 1997 and 1998 in the amounts of \$1,811.00 and \$1,862.00, respectively, plus penalty and interest.

2. Petitioner challenged the Division's notices by filing a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). Following a conciliation conference, BCMS issued a Conciliation Order dated August 2, 2002 sustaining the notices of deficiency.

3. Petitioner continued his challenge to the statutory notices by filing a petition with the Division of Tax Appeals. The petition lists the notice numbers assigned to the December 7, 2000 notices of deficiency and, by a check mark in the appropriate boxes, indicates that petitioner seeks a redetermination of a deficiency of personal income tax. The space on the petition which directs petitioner to enter "the amount of tax determined" and "the amount of tax contested" has been left blank. Paragraph six of the petition, which directs petitioner to allege the errors made by the Commissioner of Taxation and to assert facts, states in its entirety: "The information requested at conference was delivered after the deadline."

CONCLUSIONS OF LAW

A. In its affirmation in support of its motion, the Division asserts that the petition is in improper form as it "fails to contain separately numbered paragraphs stating, in clear and concise terms, each and every error petitioner alleges has been made by the Division as required by 20 NYCRR 3000.3(b)(5)." The Division further asserts in its affirmation that the petition "fails to provide the Division with fair notice of the matters in controversy and the basis for the

petitioner's position as required by 20 NYCRR 3000.4(a).” The Division therefore requests an order dismissing the petition, with prejudice, and summary determination in its favor.

B. Initially, I note that the petition's lack of separately numbered paragraphs is of little concern where, as here, the petition contains one short sentence alleging error. The content of that sentence, however, does support the Division's assertion that the petition fails to provide it with “fair notice of the matters in controversy and the basis for petitioner's position.” As noted, the error alleged in the petition is: “The information requested at conference was delivered after the deadline.” While pleadings in the Division of Tax Appeals are to be “liberally construed so as to do substantial justice” (20 NYCRR 3000.4[a]), this sentence is so ambiguous as to be meaningless. Specifically, it is unclear whether such “information requested at conference” refers to information requested by the conferee from petitioner or information requested by petitioner from the conferee. Additionally, the allegation of error offers no explanation of how “the information requested at conference” relates to the assessments which are, ostensibly, the subject of the petition. Finally, the petition does not indicate an “amount of tax contested,” which not only raises a further question regarding the meaning of the allegation of error, but also calls into question the relief sought by petitioner in this matter. Accordingly, I find that the petition fails to provide the Division with “fair notice of the matters in controversy and the basis for petitioner's position” as required under 20 NYCRR 3000.4(a).

C. The petition is also subject to dismissal for failure to state a cause for relief under section 3000.9(a)(1)(vi) of the Rules of Practice and Procedure (20 NYCRR 3000.9[a][1][vi]).¹ That is, given its meaningless allegation of error and its failure to indicate an amount of tax

1. Given the clear similarities between the basis for the Division's motion under 20 NYCRR 3000.4(a), and dismissal under 20 NYCRR 3000.9(a)(1)(vi), it is appropriate to consider this ground for dismissal of the petition *sua sponte*.

contested, the petition does not assert an error (*see, Matter of Waterset Enterprises, Inc.*, Tax Appeals Tribunal, January 16, 1992). The Rules of Practice and Procedure require petitioner to set forth in his petition, at least in summary fashion, the errors and facts he intends to establish at a hearing and the amount of tax contested. As submitted, the petition fails entirely to meet this requirement.

D. The Division's motion is hereby granted and the petition is dismissed, with prejudice, for failure to state a cause for relief. However, this Order shall not take effect and the petition shall not be so dismissed if, within 30 days of the date of this Order, petitioner submits an amended petition setting forth the amount of tax contested and the errors allegedly made by the Division, together with a statement of the facts upon which petitioner relies to establish such alleged errors.

DATED: Troy, New York
February 20, 2003

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE